



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**NOTICE OF MEETING**  
**Government Records Council**  
**January 29, 2013**

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, January 29, 2013 at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

**Public Session:**

Call to Order  
Pledge of Allegiance  
Meeting Notice  
Roll Call

**Closed Session (if necessary):**

**Public Session:**

Roll Call

**Approval of Meeting Minutes:**

Open Session Minutes (December 18, 2012)  
Closed Session Minutes (December 18, 2012)

**Cases Scheduled for Adjudication \***

**Administrative Disposition Adjudications with Recusals:**

1. David Herron v. NJ Department of Education (2011-350)

**Administrative Disposition Adjudications with no Recusals:**

2. Keith A. Werner v. NJ Department of Health & Human Services (2012-18)
3. Robert A. Tesoroni, Jr. v. City of Millville (Cumberland) (2012-77)
4. Brandon Melvin v. Union County Prosecutor's Office (2012-226)

*New Jersey is an Equal Opportunity Employer • Printed on Recycled paper and Recyclable*



5. Wallace McKelvey v. NJ Office of the Governor (2012-264)
6. Cynthia McBride v. Jersey City Municipal Utility Authority (Hudson) (2012-282)
7. Sara Dubinsky v. NJ Department of Human Services, Division of Family Development (2012-310)

#### **Individual Complaint Adjudications with Recusals:**

1. Alan Rogers v. Essex County Prosecutor's Office (2011-23)
2. Angel L. Alicea, II v. City of Hoboken, Police Department (Hudson) (2011-103)
3. Rashaun Barkley v. Essex County Prosecutor's Office (2011-221)
4. Robert G. Dooley, Jr. v. City of Newark (Essex) (2011-257)
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-323)
6. David Herron v. NJ Department of Education (2011-324)
7. Larry A. Kohn v. Township of Livingston (Essex) (2011-326)
8. Larry A. Kohn v. Township of Livingston (Essex) (2011-327)
9. Larry A. Kohn v. Township of Livingston (Essex) (2011-328)
10. Larry A. Kohn v. Township of Livingston (Essex) (2011-329)
11. Larry A. Kohn v. Township of Livingston (Essex) (2011-330)
12. Joshua Lazarus v. NJ Department of Community Affairs (2011-331)
13. Margaret Rieger v. Township of Livingston (Essex) (2011-333)
14. Katalin Gordon v. City of Orange (Essex) (2011-336)
15. Katalin Gordon v. City of Orange (Essex) (2011-337)
16. Larry A. Kohn v. Township of Livingston (Essex) (2011-342)
17. Larry A. Kohn v. Township of Livingston (Essex) (2011-343)
18. Larry A. Kohn v. Township of Livingston (Essex) (2011-344)
19. Larry A. Kohn v. Township of Livingston (Essex) (2011-345)
20. Orie J. McMillan v. City of Newark (Essex) (2011-359)
21. Larry A. Kohn v. Township of Livingston (Essex) (2011-362)
22. Sabino Valdes v. NJ Department of Education (2012-19)

#### **Individual Complaint Adjudications with no Recusals:**

23. Andrew Mayer v. Borough of Tinton Falls (Monmouth) (2008-245)
24. Rita Watson v. Washington Township Public Schools (Gloucester) (2009-29)
25. Jesse Wolosky v. Township of Jefferson (Morris) (2010-163)
26. Jesse Wolosky v. Township of Chester (Morris) (2010-184)
27. Richard Rivera v. Town of West New York (Hudson) (2010-208)
28. Melissa Ann Michalak v. Borough of Helmetta (Middlesex) (2010-220)
29. Richard Rivera v. Borough of Ho Ho Kus, Police Department (Bergen) (2010-280)
30. West Solloway v. Bergen County Prosecutor's Office (2011-39)
31. Anthony Reitzler v. Egg Harbor Police Department (Atlantic) (2011-85)
32. Ricky A. Pursley v. Township of Hardyston, Police Department (Sussex) (2011-137)
33. Walter G. Wargacki v. County of Bergen (2011-198)
34. Maria Melton v. City of Camden (Camden) (2011-233)
35. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-234)
36. Paul S. Kaplan v. Winslow Township Board of Education (Camden) (2011-237)
37. Gregory W. Havlusch, Jr. v. Borough of Allenhurst (Monmouth) (2011-243)
38. Rita Roykovich v. West Milford Board of Education (Passaic) (2011-258)
39. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-259)
40. Robert Brown v. Ocean City Board of Education (Cape May) (2011-271)

41. Robert Brown v. Sea Isle City Board of Education (Cape May) (2011-273)
42. Joseph Krrywda v. Pinelands Regional School District (Ocean) (2011-285)
43. Joseph Krrywda v. Pinelands Regional School District (Ocean) (2011-307)
44. Claudia Vargas (On behalf of the Philadelphia Inquirer) v. Camden City School District (Camden) (2011-315)
45. Quddoos Farra'd v. NJ Department of Corrections (2011-321)
46. Tom Rowan, Jr. (On behalf of Express Times) v. Warren Hills Regional School District (Warren) (2011-347)
47. Woojin Hwang v. Bergen County Prosecutor's Office (2011-348)
48. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2011-356)
49. Raymond Klepar v. Township of Little Falls (Passaic) (2011-358)
50. Chris Hayes v. City of Passaic (Passaic) (2011-368)
51. Robert B. Quinlan v. Township of Hillside (Union) (2011-371)
52. Richard Rivera v. City of Bayonne (Hudson) (2012-86)
53. Rotimi Owoh (On behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer) (2012-91)
54. Rotimi Owoh (On behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer) (2012-130)

**Court Decisions of GRC Complaints on Appeal: None**

**Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:**

Rivera v. Office of the County Prosecutor of the County of Bergen, 2012 N.J. Super. Unpub. LEXIS 2752 (Law. Div. December 11, 2012).

M.G. v. Eastern Camden County Regional School District, 2012 N.J. Super. Unpub. LEXIS 2767 (App. Div. Decembers 19, 2012).

**Executive Director's Report and New Business:**

**Public Comment:** In the interest of time, speakers are limited to **five (5) minutes**.

**Adjournment**

**\*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**Complaint Disposition Synopsis – January 29, 2013**

**Disclaimer: All summaries below are draft and are not final decisions until approved by the Council.**

**Administrative Disposition Adjudications with Recusals:**

1. David Herron v. NJ Department of Education (2011-350) - All records responsive provided in a timely manner.

**Administrative Disposition Adjudications with no Recusals:**

2. Keith A. Werner v. NJ Department of Health & Human Services (2012-18) – Reconsideration – No correspondence received by the Custodian regarding this request.
3. Robert A. Tesoroni, Jr. v. City of Millville (Cumberland) (2012-77) – Complaint settled in mediation.
4. Brandon Melvin v. Union County Prosecutor's Office (2012-226) – Complaint settled in mediation.
5. Wallace McKelvey v. NJ Office of the Governor (2012-264) – Complaint settled in mediation.
6. Cynthia McBride v. Jersey City Municipal Utility Authority (Hudson) (2012-282) – Complaint settled in mediation.
7. Sara Dubinsky v. NJ Department of Human Services, Division of Family Development (2012-310) – Complaint voluntarily withdrawn.

**Individual Complaint Adjudications with Recusals:**

1. Alan Rogers v. Essex County Prosecutor's Office (2011-23)  
**REQUESTED DOCUMENTS:** Copies of reports concerning Indictment No. 305-9-86  
**RECORDS FORMAT REQUESTED:** Copies  
**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully access to any records because the Complainant failed to provide sufficient information in his OPRA request, thus making it impossible for the Custodian to identify responsive records. N.J.S.A. 47:1A-6.
2. Angel L. Alicea, II v. City of Hoboken, Police Department (Hudson) (2011-103)  
**REQUESTED DOCUMENTS:** video recordings; roll call sheets; deposition documentation  
**RECORDS FORMAT REQUESTED:** none listed  
**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**



1. The Custodian lawfully denied access to the roll call sheets responsive to Item No. 1 of the Complainant's second (2nd) request because such information could pose a significant risk to the safety of police personnel pursuant to N.J.S.A. 47:1A-1.1, *Rivera v. City of Plainfield, Police Department (Union)*, GRC Complaint 2009-317 (May 2011). See *McElwee v. Borough of Fieldsboro*, 400 N.J. Super. 388 (App. Div. 2008).

2. Because the Complainant's first (1st) request and Item No. 2 of the second (2nd) request are overly broad, fail to identify specific government records sought, fail to provide sufficient identifying information to enable the Custodian to locate responsive records and would require the Custodian to conduct research in order to determine the records which may be responsive to the requests, the Complainant's requests are invalid under OPRA pursuant to *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005); *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005) and *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007).

3. *Rashaun Barkley v. Essex County Prosecutor's Office* (2011-221)

**REQUESTED DOCUMENTS:** Photographs

**RECORDS FORMAT REQUESTED:** Copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that the Custodian has lawfully denied access to the requested photographs and has borne her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. Specifically the Complainant is not entitled to the requested photographs because they are specifically exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1997).

4. *Robert G. Dooley, Jr. v. City of Newark (Essex)* (2011-257)

**REQUESTED DOCUMENTS:** Personnel records – Title

**RECORDS FORMAT REQUESTED:** Paper copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). The Custodian's request for an extension of time is also invalid pursuant to Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because the Custodian failed to request same in writing within the statutorily mandated time frame.
2. Because the Complainant's request Item Nos. 1 and 3 through 7 ask questions or seek information rather than identifiable government records, the requests are invalid under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-

246 (September 2009). Thus, the Custodian has not unlawfully denied access to the relevant request items. *See also Ohlson v. Township of Edison (Middlesex)*, GRC Complaint No. 2007-233 (August 2009).

3. The Custodian has unlawfully denied access to the records responsive to the Complainant's OPRA request Item Nos. 2 and 8. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the responsive records. However, if records do not exist for certain individuals regarding Item No. 4, the Custodian must certify as such for each individual. Additionally, if no records responsive to Item No. 8 exist, the Custodian must certify to same.
  4. Because the City of Newark failed to submit a valid Statement of Information or notify the GRC that a change in the designation of the custodian of record has occurred, Mr. Marasco must certify whether he or someone else is currently serving as the custodian of record for the City.
  5. **The Custodian shall comply with Item Nos. 3 and 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
  6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-323)  
**REQUESTED DOCUMENTS:** CD  
**RECORDS FORMAT REQUESTED:** Hardcopies (not by regular mail)  
**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**
1. The Custodian may have unlawfully denied access to at least the two (2) CDs that he identified in the Statement of Information were received by the Borough. N.J.S.A. 47:1A-6. Thus, the Custodian must provide same to the Complainant. However, if said CDs no longer exist or were destroyed, the Custodian must certify to this fact. Additionally, the Custodian must either provide the three (3) CDs he confirmed he received in the October 22, 2007 e-mail or certify that same no longer exist or were destroyed. The Custodian must include supporting documentation if any records were destroyed.
  2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**
  3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
  4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.
6. David Herron v. NJ Department of Education (2011-324)  
**REQUESTED DOCUMENTS:** Transcripts; Certifications; Licenses  
**RECORDS FORMAT REQUESTED:** Paper copies (delivery method unspecified).  
**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**
1. The Custodian timely complied with the Council's December 18, 2012 Order by certifying that she re-redacted the responsive transcripts and sent same to the

Complainant via e-mail and further identified those records that did not exist within the extended time frame.

2. Although the Custodian unlawfully redacted grade point averages from the responsive transcripts pursuant to N.J.S.A. 47:1A-10, the Custodian timely complied with the Council's Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

7. Larry A. Kohn v. Township of Livingston (Essex) (2011-326)

**REQUESTED DOCUMENTS:** Audit Trail; Debt Statement; Vendor Report

**RECORDS FORMAT REQUESTED:** Electronically via e-mail

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, although the Custodian timely responded to the Complainant's OPRA request in writing advising that he needed an extension of five (5) days to respond to same, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(i), and *Kohn v. Township of Livingston Library (Essex)*, GRC Complaint No. 2007-124 (March 2008). See also *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-253 (September 2009).

2. Because the Custodian failed to immediately grant or deny access to the requested salary information, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5(e) pursuant to *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007). See also *Ghana v. New Jersey Department of Corrections*, GRC Complaint No. 2008-154 (June 2009) and *Wolosky v. Borough of Mount Arlington (Morris)*, GRC Complaint No. 2010-210 (Interim Order dated November 29, 2011).

3. The Custodian certified that the debt statements could not be located and that the salary schedule did not exist at the time of the Complainant's OPRA request. Further, the Complainant provided no competent, credible evidence to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to the records responsive to the Complainant's OPRA request Item Nos. 1 and 2 pursuant to *Rivera v. Union City Board of Education (Hudson)*, GRC Complaint No. 2008-112 (Interim Order dated August 11, 2009), and *Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

4. Although the Custodian possessed the records responsive to the Complainant's OPRA request Item Nos. 3 and 4 prior to advising the Complainant on September 8, 2011 that an extension of five days would be necessary, the Custodian's appropriate extension did not place an unnecessary limitation on access based on the extraordinary circumstances and lasting effects of Hurricane Irene. Additionally, the GRC declines to order disclosure of these records because the Custodian certified in the Statement of Information that he provided same to the Complainant on September 20, 2011.

5. The Custodian failed to timely respond to the Complainant's OPRA request within the extended deadline pursuant to N.J.S.A. 47:1A-5(i) and further failed to respond immediately to the Complainant's OPRA request Item No. 2 seeking salary information pursuant to N.J.S.A. 47:1A-5(e). However, the Custodian did not unlawfully deny access to the records responsive to the Complainant's OPRA request Item Nos. 1

and 2 because same could not be located or did not exist. Moreover, the Custodian's extension of time to provide the Complainant with records responsive to the Complainant's OPRA request Item Nos. 3 and 4 was appropriate based on extraordinary circumstances and the GRC declined to order disclosure of the records because the Custodian provided same to the Complainant on September 20, 2011. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

8. Larry A. Kohn v. Township of Livingston (Essex) (2011-327)

**REQUESTED DOCUMENTS:** backup documents

**RECORDS FORMAT REQUESTED:** inspection

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. Although the Custodian responded to the Complainant's OPRA request in writing in a timely manner, said response is insufficient pursuant to *Hardwick v. NJ Department of Transportation*, GRC Complaint No. 2007-164 (February 2008), and N.J.S.A. 47:1A-5(i) because he failed to provide a specific anticipated date upon which he would grant access to the responsive records. See also *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009). Moreover, the Custodian's insufficient response resulted in a "deemed" denial of access to the load tickets. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). However, the GRC declines to order disclosure of the load tickets previously provided to the Complainant on August 31, 2011.

2. Because the Custodian certified in the Statement of Information that he provided all responsive records as of August 31, 2011 and because the Complainant provided no competent credible evidence to refute this fact, the Custodian bore his burden of proof that he did not produce all of the responsive records. N.J.S.A. 47:1A-6. However, the Custodian still unlawfully denied access to the load tickets because of his insufficient response.

3. The Custodian's response to the Complainant's OPRA request was insufficient pursuant to N.J.S.A. 47:1A-5(i) because the Custodian failed to provide a date certain on which he would provide the responsive load tickets, thus resulting in an invalid extension and a "deemed" denial of access to those records. See *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). However, the GRC declines to order disclosure of those records provided to the Complainant on August 31, 2011 and further determines that the evidence of record supports that the Custodian did not deny access to any additional records. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

9. Larry A. Kohn v. Township of Livingston (Essex) (2011-328)

**REQUESTED DOCUMENTS:** documents and proof

**RECORDS FORMAT REQUESTED:** electronic copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**



1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, although the Custodian timely responded to the Complainant's OPRA request in writing advising that he needed until August 17, 2011 to respond to same, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(i), and *Kohn v. Township of Livingston Library (Essex)*, GRC Complaint No. 2007-124 (March 2008). See also *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2008-253 (September 2009). Moreover, the Custodian's September 8, 2011 response for an extension of time is also invalid pursuant to *Hardwick v. NJ Department of Transportation*, GRC Complaint No. 2007-164 (February 2008), because the Custodian failed to request same in writing within the extended time frame and further failed to provide a date certain on which he would respond.

2. The Custodian unlawfully denied access to the 12 pages of records that the Complainant identified during his October 14, 2011 inspection of the responsive records because he failed to provide same to the Complainant via e-mail in a timely manner. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of same because the Complainant informed the GRC on February 13, 2012 that he received the records at issue on February 8, 2012.

3. The Custodian failed to timely respond to the Complainant's OPRA request within the extended deadline pursuant to N.J.S.A. 47:1A-5(i) and further unlawfully denied access to 12 pages of records that the Complainant specifically identified in his October 14, 2011 inspection. N.J.S.A. 47:1A-6. However, the Custodian did initially timely respond and further granted the Complainant inspection of the records deemed to be responsive on October 14, 2011 and eventually provided the 12 pages of records on February 8, 2012. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

10. *Larry A. Kohn v. Township of Livingston (Essex)* (2011-329)

**REQUESTED DOCUMENTS:** invoices and/or billing documentation

**RECORDS FORMAT REQUESTED:** electronic copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, the Custodian's failure to immediately respond to the Complainant's request for invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007).

2. Because the Custodian certified in the Statement of Information that he provided all responsive records as of October 14, 2011 and because the Complainant provided no

competent credible evidence to refute this fact, the Custodian bore his burden of proof that he did not produce all of the responsive records. N.J.S.A. 47:1A-6. However, the Custodian still unlawfully denied access to the invoices because of his untimely response. N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i).

3. The Custodian's failure to timely respond to the Complainant's OPRA request within the prescribed deadline pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) resulted in a "deemed" denial and the Custodian further violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to the Complainant's OPRA request seeking invoices. However, the Custodian certified in the Statement of Information that he provided all responsive records to the Complainant as of September 20, 2011 and the Complainant failed to provide competent, credible evidence refuting same. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

11. Larry A. Kohn v. Township of Livingston (Essex) (2011-330)

**REQUESTED DOCUMENTS:** minutes, salaries, estimates, approvals, drawings, plans, letters

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, the Custodian's failure to immediately respond to the Complainant's OPRA request Item No. 2 for salaries results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007).

2. The Custodian violated N.J.S.A. 47:1A-5(i) by failing to provide to the Complainant copies of the available records responsive to the Complainant's OPRA request Item Nos. 1 and 2 although such records were readily available for disclosure. Additionally, pursuant to N.J.S.A. 47:1A-6, the Custodian has not borne his burden of proving that staying his response until he compiled all records was lawful, as this practice would place an unnecessary limitation on the public's right to access. N.J.S.A. 47:1A-1. However, the Council declines to order disclosure of the responsive records because the evidence of record indicates that the Custodian provided the Complainant with access to same as part of the Statement of Information.

3. Notwithstanding the Custodian's "deemed" denial, the "as built drawings" responsive to the Complainant's OPRA request Item No. 6 are exempt from disclosure as they contain security information or procedures for a building facility which, if disclosed, would jeopardize security of the building or facility or persons therein pursuant to N.J.S.A. 47:1A-1.1. and Cardillo v. City of Hoboken (Zoning Office), GRC Complaint No. 2005-158 (December 2006). The GRC further declines to order disclosure of the records responsive to the Complainant's OPRA request Item Nos. 3, 4 and 5 because the

Complainant failed to provide competent, credible evidence to refute the Custodian's Statement of Information certification.

4. The Custodian failed to bear his burden of proving a lawful denial of access to the records responsive to the Complainant's OPRA request Item No. 7. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure of these records because the Custodian provided same to the Complainant by attaching same to the Statement of Information.

5. The Custodian certified in the Statement of Information that no records responsive to the Complainant's OPRA request Item No. 8 existed and the Complainant provided no competent, credible evidence to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to the records responsive to the Complainant's OPRA request Item No. 8 pursuant to *Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

6. The Custodian's failure to timely respond in writing to the Complainant's OPRA request within the prescribed deadline pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i), resulted in a "deemed" denial, and the Custodian further violated N.J.S.A. 47:1A-5(e) by failing to respond immediately to the Complainant's OPRA request Item No. 2 seeking salary information. However, the Custodian certified in the Statement of Information that he was providing records responsive to the Complainant's OPRA request Item Nos. 1, 2 and 7. The GRC also declined to order disclosure of the records responsive to the Complainant's OPRA request Item Nos. 3, 4 and 5. Further, the drawings responsive to the Complainant's OPRA request Item No. 6 are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. and the Custodian did not unlawfully deny access to the records responsive to the Complainant's OPRA request Item No. 8 because no records existed. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

12. *Joshua Lazarus v. NJ Department of Community Affairs* (2011-331)

**REQUESTED DOCUMENTS:** e-mails

**RECORDS FORMAT REQUESTED:** e-mail

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that since there are issues of contested facts, specifically whether or not the e-mails listed in the Custodian's Statement of Information contain advisory, consultative and deliberative material which is exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1, this complaint should be referred to the Office of Administrative Law for an in camera review de novo and a determination of whether the Custodian unlawfully denied access to said e-mails. Additionally, if necessary, the Office of Administrative Law should make a determination of whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested e-mails under the totality of the circumstances.

13. *Margaret Rieger v. Township of Livingston (Essex)* (2011-333)

**REQUESTED DOCUMENTS:** police reports; permits; documents; photographs; activity logs; correspondence

**RECORDS FORMAT REQUESTED:** pick up

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's first (1st) and second (2nd) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Because the Complainant's second (2nd) request Item No. 2 fails to seek a specifically identifiable government record and instead asks questions, said request is invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Watt v. Borough of North Plainfield (Somerset), GRC Complaint No. 2007-246 (September 2009). See also Ohlson v. Township of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

3. Because the Custodian certified in the Statement of Information that the records responsive for the first (1st) OPRA request Item No. 2 exist, and there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

4. The GRC is unable to determine whether there are additional records responsive to the Complainant's second (2nd) request Item No. 1, this complaint should be referred to the Office of Administrative Law for a hearing to resolve said facts. The Office of Administrative Law should also determine if the Custodian knowingly and willfully violated OPRA if found to have unlawfully denied access to the requested records.

14. Katalin Gordon v. City of Orange (Essex) (2011-336)

**REQUESTED DOCUMENTS:** lawsuits

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. Because the Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she responded to the Complainant's request in writing within the statutorily mandated seven (7) business days, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Complainant's request is invalid under OPRA because it constitutes an open ended request that fails to identify a government record with reasonable specificity, and the fulfillment of such a request would require research outside of a custodian's statutory duties pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007).

3. In the matter before the Council, the Custodian's failure to respond in writing to the Complainant's request within the statutorily mandated seven (7) business days resulted in a deemed denial and a violation of N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. However, the Complainant's request is invalid under OPRA because such request fails to name identifiable government records and requires research outside of a custodian's duties. Accordingly, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

15. Katalin Gordon v. City of Orange (Essex) (2011-337)

**REQUESTED DOCUMENTS:** lawsuits

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. Because the Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that she responded to the Complainant's request in writing within the statutorily mandated seven (7) business days, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Due to the complexities of this matter and the lack of uncontested and sufficient evidence in the record, the GRC will exercise its discretion by referring this matter to the Office of Administrative Law to determine whether there has been an unlawful denial of access and whether Mr. Feld is entitled to intervene. N.J.S.A. 47:1A-7(e), N.J.A.C. 1:1-16.2(b), See also Gill v. NJ Department of Banking & Insurance, 2007-189 (June 2009).

16. Larry A. Kohn v. Township of Livingston (Essex) (2011-342)

**REQUESTED DOCUMENTS:** encumbrances, analysis, documents, contracts, change orders

**RECORDS FORMAT REQUESTED:** electronic copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, although the Custodian timely responded to the Complainant's OPRA request in writing advising that he needed an extension of five (5) days to respond to same, the Custodian's failure to respond in writing within the extended time frame results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(i), and Kohn v. Township of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-253 (September 2009). Moreover, the Custodian's September 8, 2011 response for an extension of time is invalid because he failed to respond in writing requesting same within the extended time frame.

2. The Custodian unlawfully denied access to the 26 pages of records that the Complainant identified during his October 14, 2011 inspection of the responsive records because he failed to provide same to the Complainant via e-mail. N.J.S.A. 47:1A-6. Therefore, the Custodian must disclose these records to the Complainant via e-mail.

3. The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

17. Larry A. Kohn v. Township of Livingston (Essex) (2011-343)

**REQUESTED DOCUMENTS:** closed session minutes, audit report pages, correspondence

**RECORDS FORMAT REQUESTED:** e-mail copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** Because the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the Complainant's October 19, 2011 OPRA request, because the Custodian did not receive the Complainant's request until October 20, 2011. Thus, the statutorily mandated seven (7) business day time frame for the Custodian to respond had not expired; the instant complaint is materially defective and therefore should be dismissed. See Sallie v. NJ Department of Banking and Insurance, GRC Complaint No. 2007- 226 (April 2009). See also Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012).

18. Larry A. Kohn v. Township of Livingston (Essex) (2011-344)

**REQUESTED DOCUMENTS:** audio recording

**RECORDS FORMAT REQUESTED:** copy and inspection

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's two (2) OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's two (2) OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of same pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian unlawfully denied access to the responsive recording in CD audio format. N.J.S.A. 47:1A-6. Thus, the Custodian must convert and provide the responsive record to the Complainant at the actual cost of reproduction.

3. The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

19. Larry A. Kohn v. Township of Livingston (Essex) (2011-345)

**REQUESTED DOCUMENTS:** closed session minutes

**RECORDS FORMAT REQUESTED:** e-mail copy

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). However, the GRC declines to order disclosure of the responsive minutes because the Custodian provided same to the Complainant via e-mail on November 23, 2011.

2. Although the Custodian did not timely respond to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) thus resulting in a "deemed" denial of access, the Custodian provided the responsive minutes to the Complainant via e-mail on November 23, 2011. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's untimely response did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

20. *Orie J. McMillan v. City of Newark (Essex) (2011-359)*

**REQUESTED DOCUMENTS:** permits, building violations, construction bids, photographs

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** Based upon a preponderance of the evidence in the record establishing that the Custodian was not in possession of records responsive to the Complainant's request, and the Complainant's failure to assert an actual denial of access to her request, there has been no unlawful denial of access pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-6. See *Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

21. *Larry A. Kohn v. Township of Livingston (Essex) (2011-362)*

**REQUESTED DOCUMENTS:** contract

**RECORDS FORMAT REQUESTED:** e-mail copy

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian's failure to respond immediately to the Complainant's OPRA request for contracts results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007). Moreover, the Custodian's response is insufficient pursuant to N.J.S.A. 47:1A-5(g) and *Shanker v. Borough of Cliffside Park (Bergen)*, GRC Complaint No. 2007-245 (March 2009), because he failed to specifically state that no records responsive to the request existed at the time of his response.

2. The Custodian certified in the Statement of Information that no records responsive to the Complainant's OPRA request existed and the Complainant provided no competent, credible evidence to refute the Custodian's certification. Therefore, the Custodian did not unlawfully deny access to the contract responsive to the Complainant's OPRA request pursuant to *Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005).

3. Although the Custodian violated N.J.S.A. 47:1A-5(e) by failing to immediately respond to the Complainant's OPRA request seeking a contract and further insufficiently responded to the Complainant's OPRA request by not stating that no record responsive existed, the Custodian did not unlawfully deny access to the requested contract because no record existed at the time of the Complainant's OPRA request. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

22. Sabino Valdes v. NJ Department of Education (2012-19)

**REQUESTED DOCUMENTS:** Notice of Motion; Checks; Tenure Charges

**RECORDS FORMAT REQUESTED:** Copies via U.S. Mail and inspection

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The evidence of record supports that the Custodian never received the subject OPRA requests, and the Complainant has not provided any credible evidence to contradict the Custodian's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's second (2<sup>nd</sup>) OPRA request No. 2.

**Individual Complaint Adjudications with no Recusals:**

23. Andrew Mayer v. Borough of Tinton Falls (Monmouth) (2008-245)

**REQUESTED DOCUMENTS:** e-mail addresses

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council accept the ALJ's Initial Decision dated October 31, 2011, which concludes that "... since [Councilman] Skudera had no knowledge of what addresses came from the website, I further FIND that there is no evidence that [Councilman] Skudera knowingly and willfully violated OPRA and unreasonably denied access to the e-mail addresses."

24. Rita Watson v. Washington Township Public Schools (Gloucester) (2009-29)

**REQUESTED DOCUMENTS:** student records

**RECORDS FORMAT REQUESTED:** copy

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew her complaint via letter to the Honorable Susan M. Scarola, Administrative Law Judge, dated December 17, 2012 (via legal counsel) because the parties have reached settlement in this matter. Therefore, no further adjudication is required.

25. Jesse Wolosky v. Township of Jefferson (Morris) (2010-163)

**REQUESTED DOCUMENTS:** approved executive session minutes

**RECORDS FORMAT REQUESTED:** electronic format

**EXECUTIVE DIRECTOR'S RECOMMENDATION:** The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew this complaint from the Office of Administrative Law via letter



from his legal counsel dated January 15, 2013. Therefore, no further adjudication is required.

26. Jesse Wolosky v. Township of Chester (Morris) (2010-184)

**REQUESTED DOCUMENTS:** audio recording, minutes, check register, OPRA request form

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that this Complaint should be dismissed because the Complainant withdrew his complaint via letter to the GRC and the Office of Administrative Law dated January 10, 2013, as the parties have settled on all outstanding issues in this matter. Therefore, no further adjudication is required.

27. Richard Rivera v. Town of West New York (Hudson) (2010-208)

**REQUESTED DOCUMENTS:** Computer Aided Dispatch Reports; Police – reports – operations

**RECORDS FORMAT REQUESTED:** N/A

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian provided the GRC with a legal certification, the unredacted records requested for the in camera inspection, a redaction index and a completed balancing test within the extended time frame to comply with the Council's Interim Order. Therefore, the Custodian timely complied with the Council's December 20, 2011 Interim Order.

2. The Custodian unlawfully denied access to the location call history's description column. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the location call history without redactions to the Complainant for the reasons set forth above.

3. The Custodian initially unlawfully denied access to Operations Report Complaint No. 2009-021310 as a criminal investigatory record because the report does not meet the two-prong test set forth in N.J.S.A. 47:1A-1.1. N.J.S.A. 47:1A-6. However, portions of the record are exempt from disclosure pursuant to N.J.S.A. 47:1A-1. Thus, the Custodian may redact field 6 through 15 and disclose the report with field 1 through 4 and field 16 unredacted.

4. The Custodian shall comply with Item Nos. 2 and 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if applicable, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

5. The Custodian lawfully denied access to Operations report Complaint No. 2010-006794 pursuant to Executive Order No. 26 (Gov. McGreevey 2002) because the report contains a description of a medical emergency. N.J.S.A. 47:1A-6. The GRC declines to address whether the record is exempt based on a citizen's reasonable expectation of privacy; because same is exempt pursuant to EO 26. See Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008).

6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

7. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

28. Melissa Ann Michalak v. Borough of Helmetta (Middlesex) (2010-220)

**REQUESTED DOCUMENTS:** Police – reports; Police –call logs

**RECORDS FORMAT REQUESTED:** Hardcopy via pickup

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:**

1. Although the Custodian provided the GRC with a legal certification, the unredacted records requested for the in camera inspection and a document index on February 6, 2012, the Custodian failed to provide certified confirmation of compliance to the Executive Director that she provided the Complainant with the responsive call logs until March 7, 2012. Therefore, the Custodian failed to fully comply with the Council’s January 31, 2012 Interim Order.

2. The Custodian lawfully denied access to the requested incident reports because they meet the two-prong test provided for in N.J.S.A. 47:1A-1.1. and are thus exempt from disclosure as criminal investigatory records.

3. Chief Lewis’ failure to respond in writing within the statutorily mandated time frame resulted in a “deemed” denial of the Complainant’s OPRA request. Additionally, the Custodian unlawfully denied access to the requested dispatch log reports and failed to fully comply with the Council’s January 31, 2012 Interim Order. However, the Custodian lawfully denied access to the requested incident reports. Additionally, the evidence of record does not indicate that Chief Lewis and the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that Chief Lewis’ untimely response and the Custodian’s denial of access did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

29. Richard Rivera v. Borough of Ho Ho Kus, Police Department (Bergen) (2010-280)

**REQUESTED DOCUMENTS:** reports, transmissions, recordings, CAD entries, duty roster

**RECORDS FORMAT REQUESTED:** electronic via e-mail

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew this complaint from the Office of Administrative Law via letter from his legal counsel dated January 4, 2013. Therefore, no further adjudication is required.

30. West Solloway v. Bergen County Prosecutor’s Office (2011-39)

**REQUESTED DOCUMENTS:** reports

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Thus, the Custodian’s failure to respond in writing to the Complainant’s OPRA request for records, either granting access, denying access, seeking clarification or requesting an extension of time results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Because the requested reports associated with the fire at Good Shepherd Episcopal Church on Godwin Avenue in Midland Park, New Jersey, on November 23, 2009 and November 24, 2009 are exempt from disclosure under OPRA as criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of

Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007).

3. Although the Custodian failed to provide the Complainant with a written response to his OPRA request within the statutorily mandated seven (7) business days, violating N.J.S.A. 47:1A-5.i. However, the Custodian did provide a response on the eighth (8th) business day following the receipt of said request. However, the Custodian did not unlawfully deny the Complainant access to the requested reports associated with the fire at Good Shepherd Episcopal Church on Godwin Avenue in Midland Park, New Jersey, on November 23, 2009 and November 24, 2009 because such reports are exempt from disclosure under OPRA as criminal investigatory records. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

31. Anthony Reitzler v. Egg Harbor Police Department (Atlantic) (2011-85)

**REQUESTED DOCUMENTS:** reports, photographs

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that because the Complainant has requested OPRA exempt criminal investigatory files, the Custodian has not unlawfully denied the Complainant access to the requested investigation report and photographs. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). Moreover, the requested crime scene photographs are not considered public records as set forth in Executive Order No. 69 (Gov. Whitman, 1997) and are not disclosable under OPRA pursuant to N.J.S.A. 47:1A-9(a).

32. Ricky A. Pursley v. Township of Hardyston, Police Department (Sussex) (2011-137)

**REQUESTED DOCUMENTS:** written statement

**RECORDS FORMAT REQUESTED:** none listed

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian provided the GRC with a legal certification, the unredacted records requested for the in camera inspection and a redaction index on October 3, 2012. However, the Custodian failed to include the required document index. Therefore, the Custodian failed to comply with the Council's September 25, 2012 Interim Order.

2. The Custodian did not unlawfully deny the Complainant access to Ms. Morales's victim statement because said statement was used as part of the criminal investigation and there is no evidence in the record that the victim statement responsive to the request is required to be "made, maintained or kept on file" pursuant to N.J.S.A. 47:1A-1.1.

3. The Custodian failed to comply with the Council's September 25, 2012 Order because he did not include the required document index. However, the victim statement responsive to the Complainant's OPRA request is considered a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

33. Walter G. Wargacki v. County of Bergen (2011-198)

**REQUESTED DOCUMENTS:** material, correspondence or documents

**RECORDS FORMAT REQUESTED:** none specified

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian provided the GRC with a legal certification, the unredacted record requested for the in camera inspection and a document index on December 26, 2012. Therefore, the Custodian timely complied with the Council's December 18, 2012 Interim Order.

2. The Custodian lawfully denied access to the requested record because said record contains attorney client privilege information pursuant to N.J.S.A. 47:1A-1.1. The responsive legal memorandum contained a written legal opinion regarding N.J.S.A. 40A:14-60 et seq. and its applicability to the Complainant's status regarding the current/proposed layoffs for the County.

34. Maria Melton v. City of Camden (Camden) (2011-233)

**REQUESTED DOCUMENTS:** photographs of people arrested

**RECORDS FORMAT REQUESTED:** none specified

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear her burden of proof that she timely responded to either of the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's first (1st) and second (2nd) OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian has lawfully denied access to the requested photographs and has borne his burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. Specifically the Complainant is not entitled to the requested photographs because they are specifically exempt pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1999).

3. The Custodian violated N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), by failing to timely respond to the Complainant's first (1st) and second (2nd) OPRA requests. However, the Complainant requested photographs of individuals arrested are specifically exempted from disclosure pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 69 (Gov. Whitman, 1999). Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

35. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-234)

**REQUESTED DOCUMENTS:** E-mails

**RECORDS FORMAT REQUESTED:** Electronic

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily

mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian failed to bear her burden of proving a lawful denial of access to any responsive records. N.J.S.A. 47:1A-6. Thus, the Custodian must either disclose the responsive records or, if no records responsive exist, certify to this fact.

3. The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, if applicable, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

36. Paul S. Kaplan v. Winslow Township Board of Education (Camden) (2011-237)

**REQUESTED DOCUMENTS:** Contracts

**RECORDS FORMAT REQUESTED:** Paper copies

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:**

1. The current Custodian timely complied with the Council’s December 18, 2012 Order by certifying that she provided the responsive record to the Complainant via certified mail within the prescribed time frame.

2. Although the Custodian did not timely respond to the Complainant’s OPRA request for an immediate access record pursuant to N.J.S.A. 47:1A-5(e) and further unlawfully denied access to the responsive contract pursuant to N.J.S.A. 47:1A-6, the current Custodian timely complied with the Council’s Order. Additionally, the evidence of record does not indicate that the Custodian’s violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

37. Gregory W. Havlusch, Jr. v. Borough of Allenhurst (Monmouth) (2011-243)

**REQUESTED DOCUMENTS:** sign in sheets

**RECORDS FORMAT REQUESTED:** copy

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that this Complaint should be dismissed because the Complainant withdrew his complaint via e-mail to the GRC on January 9, 2013. Therefore, no further adjudication is required.

38. Rita Roykovich v. West Milford Board of Education (Passaic) (2011-258)

**REQUESTED DOCUMENTS:** Report

**RECORDS FORMAT REQUESTED:** copies and on-site inspection

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:**

1. The Custodian provided the GRC with a legal certification, the unredacted records requested for the in camera inspection and a redaction index on January 10, 2013.

Therefore, the Custodian timely complied with the Council's December 19, 2012 Interim Order.

2. The Custodian failed to bear her burden of proof pursuant to N.J.S.A. 47:1A-6 that the denial of access to the requested bullying report was lawful. Therefore the Custodian must disclose the material listed above which is not exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and Education Law Ctr. v. N.J. Dept. of Educ., 198 N.J. 274 (2009).

3. On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the In Camera Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.

4. The Council defers analysis of whether the former Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

39. Jeff Carter v. Franklin Fire District #2 (Somerset) (2011-259)

**REQUESTED DOCUMENTS:** Meeting minutes

**RECORDS FORMAT REQUESTED:** Electronic

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian failed to fully comply with the Council's December 18, 2012 Order because although Ms. Accardi provided the responsive records to the Complainant within the prescribed time frame, the Custodian failed to submit certified confirmation of compliance.

2. The Custodian's failure to respond to the Complainant's OPRA request resulted in a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) and the Custodian failed to fully comply with the Council's Order by failing to submit certified confirmation of compliance as directed by said Order. However, Ms. Accardi did provide all records sought to the Complainant on December 27, 2012 via e-mail to include two (2) sets of minutes that were not disclosable at the time of the Complainant's OPRA request. Further, Ms. Accardi confirmed that no minutes dated May 11, 2011 existed because the Franklin Fire District No. 1 Board did not meet. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Id. at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, Ms. Accardi specified in her letter to the Complainant dated December 27, 2012 that four (4) of the responsive minutes were provided to the Complainant after the filing of this complaint and the Custodian presented no evidence in the record to indicate that this complaint was not the catalyst for said disclosure. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable

attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in *New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections*, 185 N.J. 137, 156-158 (2005) and the Council's decisions in *Wolosky v. Township of Sparta (Sussex)*, GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

40. Robert Brown v. Ocean City Board of Education (Cape May) (2011-271)

**REQUESTED DOCUMENTS:** Salary, wages, health benefits, pension information, health insurance waivers, life insurance costs, and legal costs

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian timely complied with the Council's December 18, 2012 Interim Order by providing the requested records to the Complainant and providing certified confirmation to the GRC within the prescribed time frame to comply.
2. In the matter before the Council, the Custodian failed to bear his burden of proof that he timely responded to the Complainant's request. In addition, the Custodian's request for clarification from the Complainant was unreasonable given the sufficient specificity of the Complainant's request and accordingly constituted an unlawful restriction of access. However, the Custodian lawfully denied the Complainant's request for individual employee health benefits and waivers information as such information is exempt from disclosure pursuant to the Privacy Rule of Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C.A. Section 1301, N.J.A.C. 17:9-1.2, and N.J.S.A. 47:1A-9. Moreover, the Custodian timely complied with the Council's December 18, 2012 Interim Order requiring the disclosure of certain records. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

41. Robert Brown v. Sea Isle City Board of Education (Cape May) (2011-273)

**REQUESTED DOCUMENTS:** How many students are in the school system?

Salary, wages, health benefits, pension information, health insurance waivers, life insurance costs, and legal costs.

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian timely complied with the Council's December 18, 2012 Interim Order by providing the requested records to the Complainant and providing certified confirmation to the GRC within the prescribed time frame to comply.
2. In the matter before the Council, the Custodian failed to bear his burden of proof that he timely responded to the Complainant's request. In addition, the Custodian's request for clarification from the Complainant was unreasonable given the sufficient specificity of the Complainant's request and accordingly constituted an unlawful restriction of access. However, the Custodian lawfully denied the Complainant's request for individual employee health benefits and waivers information as such information is

exempt from disclosure pursuant to the Privacy Rule of Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C.A. Section 1301, N.J.A.C. 17:9-1.2, and N.J.S.A. 47:1A-9. Moreover, the Custodian timely complied with the Council’s December 18, 2012 Interim Order requiring the disclosure of certain records. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

42. Joseph Krrywda v. Pinelands Regional School District (Ocean) (2011-285)

**REQUESTED DOCUMENTS:** certifications, assurance statement form G, resumes

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that because the Custodian failed to comply with the terms of the Council’s Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render an opinion. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council’s December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

43. Joseph Krrywda v. Pinelands Regional School District (Ocean) (2011-307)

**REQUESTED DOCUMENTS:** certifications, assurance statement form G, resumes

**RECORDS FORMAT REQUESTED:** copies

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that because the Custodian failed to comply with the terms of the Council’s Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render an opinion. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council’s December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

44. Claudia Vargas (On behalf of the Philadelphia Inquirer) v. Camden City School District (Camden) (2011-315)

**REQUESTED DOCUMENTS:** payroll records

**RECORDS FORMAT REQUESTED:** e-mail

**EXECUTIVE DIRECTOR’S RECOMMENDATIONS:**

1. Pursuant to N.J.S.A. 47:1A-6, the Custodian has not carried her burden of proving a lawful basis for a denial of access to the requested records because said records are



considered payroll records pursuant to N.J.S.A. 47:1A-10 and *Burdick v. Franklin Township Board of Education*(Hunterdon), GRC Complaint No. 2007-74 (Interim Order October 31, 2007). See also *Weimer v. Township of Middletown* (Monmouth), GRC Complaint No. 2004-55 (August 2005). As such, the Custodian must release Dr. Young's attendance records for the years she served as Superintendent with appropriate redactions as necessary. The Custodian must also provide a redaction index detailing the information redacted and the lawful basis of the redactions.

2. The Custodian shall comply with item #1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

45. *Quddoos Farra'd v. NJ Department of Corrections* (2011-321)

**REQUESTED DOCUMENTS:** Denial letter

**RECORDS FORMAT REQUESTED:** none specified

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian timely complied with the Council's December 18, 2012 Order by providing a copy of the requested copy of the Administrator's denial of permission for the Complainant to attend his sister's funeral to the Complainant and provided said certified confirmation of compliance within the five (5) business days.

2. The Custodian violated N.J.S.A. 47:1A-6 because he failed to bear his burden that his denial of access to the requested copy of the Administrator's denial of permission for the Complainant to attend his sister's funeral was lawful. In addition, Mr. Byrd violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) by responding to the Complainant's OPRA request on the twelfth (12th) business day following receipt thereof. However, the Custodian timely complied with the Council's December 18, 2012 Interim Order and provided the Complainant with a copy of the Administrator's denial of permission for the Complainant to attend his sister's funeral in response to the Complainant's OPRA request. Therefore, it is concluded that the Custodian's and Mr. Byrd's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

46. *Tom Rowan, Jr. (On behalf of Express Times) v. Warren Hills Regional School District (Warren)* (2011-347)

**REQUESTED DOCUMENTS:** e-mails

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that the Complainant in this instant matter has not filed a Denial of Access Complaint pursuant to an OPRA dispute. Instead, the named request in the filed Denial of Access Complaint is a request under common law rights. Therefore, because the GRC is only empowered to adjudicate disputes within the scope of OPRA, the adjudication of this matter is outside of the GRC's jurisdiction. *Rosenblum v. Borough of Closter*, No. A-1856-05T1, 2006 N.J. Super. LEXIS 1444, at 4-5 (App.Div. December 5, 2006); N.J.S.A. 47:1A-6; See also *Bent v. Twp. of Stafford Police Dep't.*, 381 N.J. Super. 30, 38 (App. Div. 2005).

47. Woojin Hwang v. Bergen County Prosecutor's Office (2011-348)

**REQUESTED DOCUMENTS:** reports, police logs

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. Because the requested law enforcement reports (Request Item No. 1) constitute criminal investigatory files, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); and Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007).

2. Because the Custodian certified in the Statement of Information that the Bergen County Prosecutor's Office does not possess any records responsive to the Complainant's request, absent evidence in the record to refute the Custodian's certification, the Custodian has met her burden in proving that she has not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005) and N.J.S.A. 47:1A-6.

48. Harry B. Scheeler, Jr. v. Township of Galloway (Atlantic) (2011-356)

**REQUESTED DOCUMENTS:** internet browser history, deleted records

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:** The Executive Director respectfully recommends the Council find that because the Custodian certified in the Statement of Information that no records responsive to the Complainant's request exist, absent evidence in the record to refute the Custodian's certification, the Custodian has met the burden of proving that she did not unlawfully denied the Complainant access to the requested records pursuant to Pusterhofer v. New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005) and N.J.S.A. 47:1A-6. Additionally, in light of said certification, the GRC need not decide if whether the requested information is indeed a government record within the definition of a "government record" prescribed in OPRA.

49. Raymond Klepar v. Township of Little Falls (Passaic) (2011-358)

**REQUESTED DOCUMENTS:** reports, meeting minutes

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian's initial response to the Complainant's OPRA request that omitted certain responsive Annual Reports that were responsive to Item No. 1 of the Complainant's request constitutes an unlawful denial of access. Accordingly, the Custodian has failed to meet his burden of proving that his initial denial of access was lawful as mandated by N.J.S.A. 47:1A-6. However, the GRC will not order disclosure of the previously omitted records because the Custodian has certified that he has provided all of the responsive records to the Complainant in responding to the GRC's request for an SOI.

2. Because the Custodian failed to bear his burden of proving a lawful denial of access to the responsive records under N.J.S.A. 47:1A-6, the Custodian must provide the requested meeting minutes for the dates identified in the Complainant's OPRA request (Request Item Nos. 2, 3, and 4) to the Complainant. However, if minutes for a particular

date do not exist or were not approved by the Township at the time of the Complainant's OPRA request, the Custodian must certify to this fact. See *Parave-Fogg v. Lower Alloways Creek Township*, GRC Complaint No. 2006-51 (August 2006).

3. The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

50. *Chris Hayes v. City of Passaic (Passaic) (2011-368)*

**REQUESTED DOCUMENTS:** bank account statements; information on escrow statements

**RECORDS FORMAT REQUESTED:** none specified

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear her burden of proof that she timely responded to either of the Complainant's OPRA requests. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's first (1st) and second (2nd) OPRA requests either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and *Kelley v. Township of Rockaway*, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Because the Complainant's first (1st) OPRA request fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA pursuant to *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, (App. Div. 2005) and *Bent v. Stafford Police Department*, 381 N.J. Super. 30 (App. Div. 2005), *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166 (App. Div. 2007) and *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).

3. The Custodian has not borne her burden that the records responsive to the second (2nd) request are exempt from disclosure pursuant to N.J.S.A. 47:1A-6. The Custodian must disclose a copy of the records responsive to the second (2nd) OPRA request or certify that no records responsive exist.

4. The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed document index explaining the lawful basis for each redaction, or certify that the records responsive do not exist and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

5. Because the Custodian certified in the Statement of Information that no records responsive to the Complainant's first (1st) OPRA request exist, and there is no credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to these records pursuant to *Pusterhofer v.*

New Jersey Department of Education, GRC Complaint No. 2005-49 (July 2005). N.J.S.A. 47:1A-6.

6. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

51. Robert B. Quinlan v. Township of Hillside (Union) (2011-371)

**REQUESTED DOCUMENTS:** attendance reports

**RECORDS FORMAT REQUESTED:** none specified

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. The Custodian shall obtain the attendance reports responsive to the Complainant's request from Mayor Menza and provide those records, with proper redactions, if necessary, to the Complainant. See Johnson v. Borough of Oceanport (Monmouth), GRC Complaint No. 2007-107 (Interim Order July 25, 2007).

3. The Custodian shall comply with items #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.

4. The Council defers analysis of whether the Custodian and Mayor Menza knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

52. Richard Rivera v. City of Bayonne (Hudson) (2012-86)

**REQUESTED DOCUMENTS:** table, ordinance, Information Form Number EEO 4

**RECORDS FORMAT REQUESTED:** n/a

**EXECUTIVE DIRECTOR'S RECOMMENDATIONS:**

1. The Custodian did not bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

2. Based on contradictory facts in the Custodian's and Complainant's submissions, there is conflicting evidence regarding whether the Custodian, notwithstanding his deemed denial, disclosed the requested records. Therefore, it is necessary to refer this matter to the Office of Administrative Law for a hearing to resolve the facts and determine whether the Custodian disclosed the requested records in full or in part, or failed to disclose said records at all.

3. Because of the conflicting evidence submitted by both parties, this complaint must be referred to the Office of Administrative Law to resolve the facts, at which time the Administrative Law Judge should also determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

53. Rotimi Owoh (On behalf of O.R.) v. West Windsor-Plainsboro Regional School District (Mercer) (2012-91)

**REQUESTED DOCUMENT(S):** Metadata; Electronic Check Images; Cover Letter

**RECORDS FORMAT REQUESTED:** Inspection and Copies

**EXECUTIVE DIRECTOR'S RECOMMENDATION(S):**

1. Item no. 1 of the Complainant's OPRA request clearly does not seek any records, but rather information: the name, address and telephone number of "the specific bank..." This request for information is not a valid OPRA request pursuant to *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546 (App. Div. 2005). As such, despite the Custodian Counsel's disclosure of bank information, the Custodian was not obligated to do so and did not unlawfully deny access to request item no. 1.

2. Because the Custodian and the Custodian's Counsel have certified that no records responsive to the Complainant's OPRA request item nos. 2-4 exist and there is no credible evidence in the record to refute said certifications, pursuant to *Pusterhofer v. New Jersey Department of Education*, GRC Complaint No. 2005-49 (July 2005), the Custodian has not unlawfully denied the Complainant access to request item nos. 2-4. N.J.S.A. 47:1A-6.

3. The Custodian did not unlawfully deny access to the records responsive to request item no. 5 because at the time of the Complainant's March 18, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to *Bart v. City of Paterson Housing Authority*, 403 N.J. Super. 609 (App. Div. 2008). See also *Wolosky v. Township of Sparta*, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012).

4. The Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:

- a) There are contested facts regarding whether the requested screen shots originated from the SASI system or GIF files.
- b) There are contested facts regarding whether the CD-ROM provided to the Complainant by the Custodian's Counsel contained the requested metadata.
- c) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
- d) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.

54. Rotimi Owoh (On behalf of Delores Nicole Simmons) v. West Windsor-Plainsboro Regional School District (Mercer) (2012-130)

**REQUESTED DOCUMENT(S):** Student Records; Metadata

**RECORDS FORMAT REQUESTED:** Inspection and Copies

**EXECUTIVE DIRECTOR'S RECOMMENDATION(S):**

1. The Custodian did not unlawfully deny access to the records responsive to request item no. 2 because at the time of the Complainant's April 15, 2012 OPRA request, the Complainant had already been provided with full access to the requested records in both hard copy and in electronic format on a CD-ROM. Thus, requiring the Custodian to duplicate another copy of the requested records and send them to the Complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry, pursuant to *Bart v. City of Paterson Housing Authority*, 403 N.J. Super. 609 (App. Div. 2008). See also *Wolosky v. Township of Sparta*, Docket No. A-1975-11T1 (Unpub. App. Div. December 13, 2012).

2. The Council should refer this matter to the Office of Administrative Law ("OAL") for a hearing to resolve the facts for the following reasons:

- a) There are contested facts regarding the existence and availability of the metadata requested.
- b) There are contested facts regarding whether the CD-ROM previously provided to the Complainant by the Custodian's Counsel contained the requested metadata.
- c) There are contested facts regarding whether the extraction of metadata will disclose personal identifying information about any of the students.
- d) The highly technical nature of this issue and the employment of computer experts warrants a full hearing to resolve the issues.

Additionally, this complaint should be referred to OAL to determine whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances. Further, this complaint should be referred to OAL to determine whether the Complainant is entitled to a prevailing party attorney's fee.